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Maine Labor Relations Board Annual Report, Fiscal Year 2007

Maine Labor Relations Board

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ANNUAL REPORT
MAINE LABOR RELATIONS BOARD

Fiscal Year 2007

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (2007).

Introduction

The mission of the Maine Labor Relations Board and its affiliated organizations, the Panel of Mediators and the State Board of Arbitration and Conciliation, is to foster and improve the relationship between public employees and their employers. The Maine Labor Relations Board ("Board") protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine's public sector employees. The Board does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing prohibited practice complaints. The Panel of Mediators and the State Board of Arbitration and Conciliation provide dispute resolution procedures, to assist parties in negotiating initial or successor collective bargaining agreements, and in resolving contract grievance issues. The focus of this report is the activity of the Labor Board during the fiscal year.

During the past year, the Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, demand for the Board's services was generally lower than in the previous year. The defining feature of the reporting period was the high degree of uncertainty in public finance. The continued public discourse regarding tax relief and the pendency of the Taxpayers' Bill of Rights ("TABOR") referendum initiative until early November were of concern to both labor and management.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms, with the term of office of each primary member expiring on September 30 of successive years. The terms of the alternate members expire at the same time as that of their respective primary member. Public Chair Peter T. Dawson of Hallowell, Employee Representative Carol B. Gilmore of Charleston, and Employer Representative Karl Dornish, Jr., of Winslow continued to serve throughout the year. Alternate Chairs Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer, Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L.

Piccone of Portland, and Alternate Employer Representatives Edwin S. Hamm of Portland and Richard L. Hornbeck of Bowdoinham all continued to serve in their respective capacities.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board's web site continued to be the prime source for research of Board precedent. The site is equipped with a search engine and contains an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Since its inception the web site has been maintained and updated by Board staff. The Board has undertaken a project in collaboration with the Office of the Chief Information Officer to redesign the web site in order to bring it into compliance with the State accessibility standards. Over the years, the web site has been highly praised by the labor-management community.

Legislative Matters

Several bills that affected, or would have affected, the Board's operations or jurisdiction were considered by the Legislature this year; three were enacted and signed into law by the Governor. The State biennial budget, L.D. 499, Section XXXX-13, included provisions for the transfer of employees, the restructuring of bargaining units and resolution of representation issues for the newly-formed regional school units contemplated in the bill. In essence, all school employees employed by the constituent

school administrative units on the operational date of the regional school unit will become employees of the new employer. All existing bargaining agents will be recognized by the regional school unit and will continue to administer the collective bargaining agreements in force on the operational date and will negotiate interim successor agreements as may be required to make all collective bargaining agreements coterminous with the latest expiring agreement for the new system-wide merged bargaining unit. To the extent possible, the existing bargaining units will be merged in a manner to avoid representation conflicts. If a representation conflict cannot be avoided, the unit employees will select a bargaining agent from among the employee organizations that represented the employees in the classifications included in the merged unit or they may opt for no representation through a Board-conducted secret ballot election. The budget bill was enacted with bipartisan support and was signed into law late in the legislative session.

A second bill enacted and signed into law this session that impacts the Board's jurisprudence was L.D. 1915, An Act To Protect Fair Share Workers from Termination. Two substantive provisions of the bill codified long-standing MLRB case law holding that public employees in Maine have the statutory right to join or not to join or participate in the activities of an employee organization for purposes of collective bargaining, except that, in instances where the public employer and the bargaining agent have so agreed in a collective bargaining agreement, a public employee may be required to pay a service fee to the bargaining agent as a condition of continued employment. The service fee represents each represented employee's pro rata share of the bargaining agent's costs incurred in negotiating and administering the collective bargaining agreement that controls the wages and terms and conditions of employment for all of the employees in the bargaining unit. The major change effected by the new law is that it authorizes the employer to deduct service fees owed by an employee from the employee's pay and remit such sums to the bargaining agent without the a signed authorization from the employee. Previously, the only option available for enforcement of a service fee provision was terminating the employment of those employees who refused to pay the fee, after having exhausted the established fee challenge process. Finally, the bill directed the Board to study the existing fee challenge arbitration process and report to the Joint Standing Committee on Labor with recommendations and necessary implementing legislation to provide for the resolution of such disputes by the Board or by the State Board of

Arbitration and Conciliation.

The third bill enacted this year that impacted the Board's jurisdiction was L.D. 836, An Act To Enhance Special Education. As noted in last year's report, a bill enacted in the One Hundred Twenty-Second Legislature, Chapter 662 of the Public Laws of 2005, included several provisions that restructured the responsibilities of the State Department of Education in connection with the 16 regional sites of the Child Development Services System ("CDS"). Among the changes enacted last session, the definition of public employers within the jurisdiction of the Municipal Public Employees Labor Relations Law, 26 M.R.S.A. § 962(7)(A), was amended to delete reference to the boards of directors for the regional sites. This change resulted in some ambiguity as to whether the State intermediate educational unit and/or the regional intermediate educational units were the public employer(s) of the CDS employees for purposes of collective bargaining and, depending on the answer, affected the number and scope of bargaining units of CDS employees. L.D. 836, enacted and signed into law as Chapter 307 of the Public Laws of 2007, clarified that the State intermediate educational unit was the public employer of CDS employees for purposes of collective bargaining.

Four other bills that were not enacted would have had an impact on Board operations or jurisprudence. L.D. 814 would have provided for final and binding interest arbitration on all issues for State, county, municipal, and K-12 school employees. Under current law, if public sector employers and the bargaining agents that represent their employees are unable to reach agreement on initial or successor collective bargaining agreements through face-to-face negotiations, the labor relations laws provide three dispute resolution mechanisms: mediation, fact-finding, and interest arbitration. The interest arbitrators' decision is final and binding on all unresolved issues except for controversies over salaries, pensions, and insurance, where the arbitrators can only recommend the terms of settlement. After the parties have negotiated for a reasonable time on the issues not resolved by interest arbitration, the public employer is permitted to implement its "last-best offer" on any open wages, pensions, and insurance issues, provided that they have negotiated in good faith throughout the process. As amended by a majority of the members of the Labor Committee, the bill would only have applied to State employees and would have sunset in five years. The bill as amended failed

enactment in the Senate.

Two bills, L.D.'s 913 and 1593 sought to place limits on political contributions by public employee bargaining agents. The former bill required labor organizations that represent State employees to only make political contributions that are based on political party in the same percentages as the members of the bargaining unit indicate by secret ballot. The trigger for the secret ballot party preference poll would have been a written request to the executive director of the Board by at least 10% of the members of a bargaining unit. The second bill would have required that bargaining agents that represent municipal, school or utility district, or county employees could only use a member's dues or service fee paid by a non-member for political purposes upon the written consent of each employee paying such dues or fee. A third bill, L.D. 1604, would have prohibited public employers from requiring non-member bargaining unit employees to pay a service fee to the bargaining agent that represents them as a condition of continued employment and would have banned public employers from disciplining or discharging employees for non-payment of union dues or service fees. The Joint Standing Committee on Labor voted unanimously to report all three bills out "Ought Not to Pass."

Bargaining Unit and Election Matters

During fiscal year 2007, the Board received 16 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 24 of these filings in FY 06, 21 FY 05, 24 in FY 04, 23 in FY 03 and 19 in FY 02. Of the 16 FY 07 filings, 9 were for K-12 educational units, 6 were for municipal or county government units, and 1 concerned State Executive Branch employees. The unit agreements were filed by the following employee organizations:

Maine Education Association/NEA¹

7 agreements

(South Portland Instructional Support Professional Unit)
(MSAD #32 Certified Personnel Unit)
(Old Orchard Beach School Dept. Food Service
Employees Unit)
(Scarborough School Dept. Custodians Unit)

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

| | |
|--|---|
| (Scarborough School Dept. Food Service Employees Unit) | |
| (MSAD #39 Directors/Managers Unit) | |
| (MSAD #36 Food Service Employees Unit) | |
| <u>Teamsters Union Local 340</u> | 5 |
| (Biddeford Police Staff Support Unit) | |
| (Somerset County Sheriff's Dept. Corrections Unit) | |
| (Somerset County Sheriff's Dept. Patrol Division Unit) | |
| (Somerset County Sheriff's Dept. Communications Division Unit) | |
| (Town of Waterboro Employees Unit) | |
| <u>Maine State Employees Association</u> | 3 |
| (State of Maine Supervisory Services Unit) | |
| (Child Development Services Professional-Technical Unit) | |
| (Child Development Services Support Staff Unit) | |
| <u>AFSCME Council 93</u> | 1 |
| (Lincoln County Sheriff's Dept. Unit) | |

Of the 16 filings, 10 were for new units and 6 were for changes to existing units.

Thirty-two (32) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 07: 30 were for determinations and 2 were for clarifications. One of the new unit petitions went to hearing. Agreements were reached in 17 cases, 2 unit determination decisions were issued, 1 was withdrawn, 1 was dismissed and 11 are pending. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 56.25% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 16 unit petitions filed in FY 06, 8 in FY 05, 10 in FY 04, 15 in FY 03, and 14 in FY 02. The unit determination/clarification requests were filed by the following employee organizations:

| | |
|---|--------------|
| <u>Maine State Employees Association</u> | 18 petitions |
| (Child Development Services-Androscoggin County Unit) | |
| (Child Development Services-Lincoln County Unit) | |
| (Child Development Services-Knox County Unit) | |
| (Child Development Services-Waldo County Unit) | |
| (Child Development Services-Hancock County Unit) | |
| (Child Development Services-Norway/Mexico Unit) | |
| (Child Development Services-Southern Kennebec Unit) | |
| (Child Development Services-Project Peds-Waterville Unit) | |
| (Child Development Services-CDS Search Unit) | |
| (Child Development Services-Washington County Unit) | |

| | |
|--|---|
| (Child Development Services-Franklin County Unit) | |
| (Child Development Services-York County Unit) | |
| (Child Development Services-Aroostook County Unit) | |
| (Child Development Services-Piscataquis County Unit) | |
| (Waldo County General Government Employees Unit)(1st) | |
| (Waldo County General Government Employees Unit)(2nd) | |
| (1st petition was withdrawn and a new petition was filed) | |
| (Waldo County Jail Corrections Officers Unit) | |
| (Waldo County Jail Supervisory Staff Unit) | |
| <u>Maine Education Association/NEA</u> | 6 |
| (Old Orchard Beach School Dept. Food Service Employees Unit) | |
| (Scarborough School Dept. Bus Drivers Unit) | |
| (School Union #44 Professional Assistants Unit) | |
| (Saco School Dept. Transportation Employees Unit) | |
| (MSAD #36 Food Service Employees Unit) | |
| (Saco School Dept. School Secretaries Unit) | |
| <u>Teamsters Union Local 340</u> | 3 |
| (County of Cumberland Cooks, Mechanics & Maintenance Unit) | |
| (Town of Waterboro Employees Unit) | |
| (Town of Kittery Professional Unit) | |
| <u>AFSCME Council 93</u> | 2 |
| (South Portland City Bus Drivers Unit) | |
| (Lewiston Housing Authority Non-Managerial Employees Unit) | |
| <u>Piscataquis County Sheriff Admin. Employees Bargaining Unit</u> | 1 |
| (Piscataquis County Sheriff's Dept. Administrative Employees Unit) | |
| <u>Richmond Employees Association</u> | 1 |
| (Richmond Municipal Employees Unit) | |
| <u>Stephen Marean, Petitioner</u> | 1 |
| (Portland Fire Department Unit) | |
| (seeking severance of EMS Division from Firefighters) | |

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a secret ballot bargaining agent election is conducted by the Board. An election is held to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 07 there were 2 voluntary recognitions filed, involving the following employee organizations:

| | |
|--|-------------------------|
| <u>Maine Education Association/NEA</u> | 1 voluntary recognition |
| (South Portland School Dept. Instructional Support Professionals Unit) | |
| <u>Teamsters Union Local 340</u> | 1 |
| (County of Cumberland Cook II's Unit) | |

Thirty-one (31) bargaining agent election requests were filed in FY 07; 7 elections

were held, including matters carried forward from FY 06, the bargaining agent was voluntarily recognized in 1 case, 15 requests were withdrawn and 10 election matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

| | |
|--|----|
| <u>Maine State Employees Association</u> | 20 |
| (Child Development Services-Androscoggin County Unit) | |
| (Child Development Services-Lincoln County Unit) | |
| (Child Development Services-Knox County Unit) | |
| (Child Development Services-Waldo County Unit) | |
| (Child Development Services-Hancock County Unit) | |
| (Child Development Services-Norway/Mexico Unit) | |
| (Child Development Services-Southern Kennebec Unit) | |
| (Child Development Services-Project Peds-Waterville Unit) | |
| (Child Development Services-CDS Search Unit) | |
| (Child Development Services-Washington County Unit) | |
| (Child Development Services-Franklin County Unit) | |
| (Child Development Services-York County Unit) | |
| (Child Development Services-Aroostook County Unit) | |
| (Child Development Services-Piscataquis County Unit) | |
| (Child Development Services-Professional-Technical Unit) | |
| (Child Development Services-Support Staff Unit) | |
| (Waldo County General Government Employees Unit)(1st) | |
| (Waldo County General Government Employees Unit)(2nd) | |
| (1st petition was withdrawn and a new petition was filed) | |
| (Waldo County Jail Corrections Officers Unit) | |
| (Waldo County Jail Supervisory Staff Unit) | |
| <u>Maine Education Association/NEA</u> | 6 |
| (Old Orchard Beach School Dept. Food Services Employees Unit) | |
| (Scarborough School Dept. Bus Drivers Unit) | |
| (School Union #44 Professional Assistants Unit) | |
| (Saco School Dept. Transportation Employees Unit) | |
| (MSAD #36 Food Service Employees Unit) | |
| (Saco School Dept. School Secretaries Unit) | |
| <u>Teamsters Union Local 340</u> | 2 |
| (Cumberland County Cooks, Mechanics & Maintenance Unit) | |
| (Waterboro Town Employees Unit) | |
| <u>AFSCME Council 93</u> | 2 |
| (South Portland City Bus Drivers Unit) | |
| (Lewiston Housing Authority Non-Managerial Employees Unit) | |
| <u>Piscataquis County Sheriff Administrative Employees Bargaining Unit</u> | 1 |
| (Piscataquis County Sheriff's Dept. Administrative Employees Unit) | |

In FY 06, there were 3 voluntary recognitions filed, 16 bargaining agent election requests received, and 11 elections held.

In addition to representation election requests, the Board received 4 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat and replace an incumbent as bargaining agent for bargaining unit members. Three elections were held and 1 petition is pending. The results of the decertification/certification petitions were as follows:

| <u>Petitioner (Bargaining Unit)</u> | <u>Incumbent Agent</u> | <u>Outcome</u> |
|---|--|----------------|
| Maine Association of Police (Belfast Police Unit) | AFSCME Council 93 | MAP |
| MSAD #5 Pupil Transportation Assn. (MSAD #5 Bus Drivers Unit) | Teamsters Union Local 340 | Teamsters |
| Scarborough Ed.Assn./MEA/NEA (Scarborough School Dept. Custodians Unit) | Scarborough Custodians Assn. | MEA |
| Maine Education Association (Scarborough School Dept. Food Services Employees Unit) | Scarborough Food Services Employees Assn. | Pending |

The Board did not receive any straight decertification petitions in FY 07. No new union is involved in this type of petition; rather, the petitioner is simply attempting to remove the incumbent agent. One (1) straight decertification petition was received in FY 06. No disclaimers of interest were filed this year. Disclaimers arise when a bargaining agent no longer wishes to represent a bargaining unit.

There were 4 election matters carried over from FY 06; consequently, there were 39 such matters requiring attention during the fiscal year. This compares with a total of 25 in FY 06, 20 in FY 05, 23 in FY 04, 22 in FY 03, and 18 in FY 02.

Representation Appeals

Parties aggrieved by the decisions of the executive director or the director's designee in representation matters, including unit determination and unit clarification decisions or concerning the conduct of elections, may appeal to the Board. One representation appeal was filed this year. *Cumberland County (Sheriff's Department) and Teamsters Union Local 340*, Case No. 07-UDA-01. The dispute was presented to the Board through written briefs, oral argument was waived, and the Board issued its decision

on January 16, 2007.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully discussed in the Annual Report of the Panel of Mediators.

Interest mediation is the process through which State mediators assist parties in negotiating initial or successor collective bargaining agreements. The number of new interest mediation requests received during the fiscal year decreased. There were 47 new requests filed this year compared with 58 last year. In addition to the new mediation requests received during FY 07, there were 27 matters carried over from FY 06 that required some form of mediation activity during the year. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year was 74, down substantially from 94 in FY 06. During the downturn in the regional economy in the early 2000's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 03 and FY 04 than would normally be expected. Beginning in late FY 2004, more parties resumed negotiating multi-year agreements. The decreased demand for mediation services this year is the result of one major factor. Until after the election in November, 2006, pendency of the TABOR referendum question left public employers and bargaining agents unsure of what resources would be available to fund any agreements going forward.

The settlement rate for cases where mediation was concluded this year, including carryovers from FY 06, increased significantly. This year's settlement rate was 84.9%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to a high of 88.5% in FY 2005, with a mean of 77.46%. Anecdotal evidence from the mediators suggests that continued uncertainty regarding the impact of spending caps in the future and significant increases in health insurance premiums resulted in a more difficult bargaining climate this year. Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the twelve-month

period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

One request for preventive mediation services was received this year. Interest in non-confrontational, interest-based negotiations in the labor-management community has waned in the last three years, despite the effectiveness of the process in achieving settlements (58 settlements in 60 cases). In fact, prior to FY 02, all of the preventive mediation efforts had been successful. Preventive mediation is only undertaken upon the joint request of the parties; therefore, the fact that only one request for such services was received this year may be a negative development or it may just indicate parties' belief that their differences can be best addressed through traditional bargaining.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2007, 13 fact-finding requests were filed. There were 12 requests received in FY 06. Considering all cases, including 5 carryovers from FY 2006, 6 requests went to hearing, 7 petitions were withdrawn or otherwise settled, and 5 petitions are pending hearing. In FY 06, 10 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

| | |
|--|------------|
| <u>Maine Education Association/MEA/NEA</u> | 8 requests |
| (MSAD #29 Bus Driver/Custodian Unit) | |
| (MSAD #54 Teachers & Ed Techs Unit) | |
| (University of Maine System C.O.L.T Unit) | |
| (Jay School Dept. Educational Technicians Unit) | |
| (Millinocket School Dept. Support Personnel Unit) | |
| (Vassalboro School Dept. ESP Unit) | |
| (Five Town CSD Professional Unit) | |
| (Wiscasset School Dept. Teachers Unit) | |
| <u>Teamsters Union Local 340</u> | 3 |
| (Jay School Dept. Bus Drivers & Custodians Unit) | |
| (Rockport Police Unit) | |
| (Augusta Water & Sanitary District Employees Unit) | |
| <u>AFSCME Council 93</u> | 2 |
| (MSAD #54 Support Unit) | |
| (Rumford Public Works Unit) | |

During the second half of the FY 06, a number of questions arose concerning fact-finding practices and procedures, particularly those involving private fact-finders appointed pursuant to 26 M.R.S.A. § 965(3)(B). The executive director concluded that

certain aspects of the fact-finding process needed to be reviewed. As the first step in this inquiry, a meeting was held on June 16, 2006, including parties, practitioners, partisan fact finders in the public sector labor-management community and members of the Board staff to examine whether problems existed, to identify the nature and scope of such issues, and to explore solution alternatives. In light of the comments and suggestions from the client community, the executive director issued guidelines clarifying aspects of the fact-finding process and creating shared expectations among the parties in fact-finding proceedings. The draft guidelines were distributed to all known practitioners in the public sector labor-management community as well as to all of the fact finders, including the members of the State Board of Arbitration and Conciliation. Further comments were received and some were incorporated into the guidelines.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Unresolved questions concerning salaries, pensions and insurance are subject to interest arbitration, but an award on these matters is only advisory. In recent years the Board has received few interest arbitration requests. None have been received in the last six years. One was filed in FY 01, none in FY 00, 2 in FY 99, and 2 in FY 98.

The various labor relations statutes do not require parties to notify the Board when they are invoking mandatory interest arbitration. The statutes do require that arbitration awards be filed with the Board; however, they usually are not. This year, no interest arbitration decisions were received. While we assume that this means there were no interest arbitration awards in the public sector during the year, it may be that parties have simply failed to provide notification to the Board.

Prohibited Practice Complaints

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Eighteen (18) complaints were filed in FY 07. This represents a 25 percent decrease over the FY 06 level. For the

last six years, including the current year, the number of complaints filed each year has fluctuated from a low of 12 to a high of 24, with the mean being 18.33. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

The 2005-2007 collective bargaining agreements between the Maine State Employees Association and the State of Maine for the four Executive Branch bargaining units represented by MSEA contained a "fair share" union security clause. Unlike the union security provision in the parties' prior agreements, those in the current agreements apply to all unit employees who are not members of the bargaining agent. These contract articles require that, as a condition of continued employment, non-members must pay to the bargaining agent a percentage of union dues, representing each individual's share of the cost incurred by the union in negotiating and administering the collective bargaining agreement. The constitutionality of the specific provisions of the union security article was upheld in a highly publicized action in the United States District Court. *Daniel B. Locke, et al., v. Edward A. Karass, State Controller, et al.*, Case No. 05-CV-112-P-S (D. Maine, March 31, 2006).

While the "fair share" litigation in the Federal Court did not involve the Board, it was widely publicized and closely watched by the public sector labor-management community. The service fee provisions in the Executive Branch collective bargaining agreements did appear on the Board's docket this year. A non-member unit employee filed a prohibited practice complaint which sought review of the initial fee arbitration decision. The complaint was dismissed by the executive director on the grounds that the Board has no jurisdiction to review arbitration decisions. Under 26 M.R.S.A. § 979-M, only the Superior Court has jurisdiction to review arbitration awards. The service fee provisions also had an indirect impact on the agency's workload. During the first three quarters of the year, non-member unit employees who objected to paying the fee organized an insurgent employee organization, Associated Government Employees of Maine, and launched a campaign seeking to replace MSEA as the bargaining agent for one or more of the Executive Branch bargaining units. Two prohibited practice complaints were filed by an employee, charging that the MSEA had interfered with, restrained, or coerced the unit employees in the free exercise of their right to seek decertification of the incumbent employee organization. One complaint was dismissed in-part by the executive director for

failure to state a claim upon which relief may be granted by the Board; however, the balance of the complaint is being processed to be heard by the Board. The second complaint, also charging unlawful interference, restraint or coercion, was found legally insufficient by the executive director, the complainant has been accorded the opportunity to amend the complaint, and the matter is pending at this time. The service fee provisions also prompted the introduction of four bills in the Legislature, L.D.'s 913, 1593, 1604 and 1915, discussed earlier in this report.

In addition to the 18 complaints filed in FY 07, there were 9 carryovers from FY 06, compared with 24 complaints and 7 carryovers last year. Board panels conducted 2 evidentiary hearings during the year, compared with 1 in FY 06. The Board issued formal Decisions and Orders in 2 cases. Board chairs, sitting as prehearing officers, held conferences in 8 cases, compared with 5 in FY 06. Sixteen (16) complaints were dismissed or withdrawn at the request of the parties. Seven (7) complaints await prehearing and/or hearing. Two (2) cases were dismissed by the executive director.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

| | |
|--|--------------|
| <u>AFSCME Council 93</u> | 5 complaints |
| (Bangor) | |
| (Ellsworth.) | |
| (Maine Correctional Center) | |
| (Maine State Prison) | |
| (Penobscot County) | |
| <u>Individuals</u> | 5 |
| (AFSCME) | |
| (MSEA) | |
| <u>Maine Education Association/NEA</u> | 4 |
| (Augusta) | |
| (Jefferson) | |

| | |
|--|---|
| (MSAD #27) | |
| (University of Maine System | |
| <u>International Association of Firefighters</u> | 1 |
| (Bangor) | |
| <u>Lincoln County Commissioners</u> | 1 |
| (AFSCME Council 93) | |
| <u>Teamsters Union Local 340</u> | 1 |
| (Old Orchard Beach) | |
| <u>University of Maine System</u> | 1 |
| (AFUM) | |

Appeals

An appeal to the Superior Court initiated in the last fiscal year was decided and then appealed to the Law Court this year by a pro se litigant whose prohibited practice complaint had been dismissed by the Executive Director as untimely. The Complainant alleged that the State and MSEA had a duty to conduct a market pay analysis for his job classification and was based on events that occurred over 4 years before the complaint was filed. The Board upheld the dismissal of the complaint on the grounds of timeliness, failure to state a viable claim, and standing. *William D. Neily v. State of Maine and Maine State Employees Association, Local 1989, SEIU*, Case No. 06-13, (May 11, 2006). The Superior Court affirmed the Board's decision on October 23, 2006. On appeal, the Law Court issued a memorandum decision on May 15, 2007, holding that the complaint was properly dismissed on the ground that it was barred by the six-month limitation period.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

| | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|--|------------|------------|------------|------------|------------|------------|
| Unit Determination/ Clarification Requests | | +7% | -33% | -20% | +100% | +100% |
| Number filed-- | 14 | 15 | 10 | 8 | 16 | 32 |
| Agreements on Bargaining Unit (MLRB Form #1) | | +21% | +4.3% | -12.5% | +14.3% | -33.3% |
| Number filed-- | 19 | 23 | 24 | 21 | 24 | 16 |

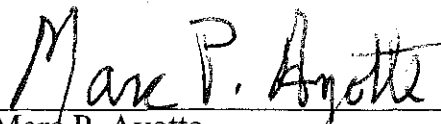
| | | | | | | |
|--|----|--------|--------|--------|--------|---------|
| Voluntary Recognitions (MLRB Form #3) Number filed-- | 3 | +167% | -75% | -50% | +200% | -33.3 % |
| Bargaining Agent Election Requests Number filed-- | 9 | +22% | -9.1% | -10% | +77.8% | +93.75% |
| Decertification Election Requests Number filed-- | 1 | -100% | 0% | +300% | -66.7% | -100% |
| Decert./Certification Election Requests Number filed-- | 5 | -40% | +233% | -80% | +150% | -20% |
| Mediation Requests Number filed-- | 54 | +18.5% | +1.6% | -15.4% | +5.4% | -18.96% |
| Fact-Finding Requests Number filed-- | 14 | +64% | -43.5% | 0% | -7/7%% | 0% |
| Prohibited Practice Complaints Number filed-- | 17 | +35.3% | -30.4% | -25% | +100% | -25% |

The above table indicates that the demand for the Board's different services decreased during the fiscal year, perhaps reflecting the uncertainties in public sector finance and structure. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and firefighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. Contrary to last year's prediction, there was an increase in organizational activity this year and there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services in the future.

During FY 07, public sector labor-management relations in Maine continued to mature. Parties continue to rely on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 29th day of June 2007.

Respectfully submitted,



Marc P. Ayotte
Executive Director
Maine Labor Relations Board